

**CALIFORNIA COASTAL COMMISSION**

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**TH 18C**

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Hearing Date: 7/14-16/04  
Commission Action:

**STAFF REPORT: APPEAL**  
**SUBSTANTIAL ISSUE for A-5-PPL-03-465**

**LOCAL GOVERNMENT:** City of Los Angeles

**LOCAL DECISION:** Approval with Conditions

**APPEAL NUMBER:** A-5-PPL-03-465

**APPLICANT:** Y.M.C.A. of Metropolitan Los Angeles

**APPELLANTS:** No Oil, Inc. (c/o Barbara Kohn); Friends of Temescal Canyon.

**PROJECT LOCATION:** 15601 Sunset Boulevard, Pacific Palisades City of Angeles  
(County of Los Angeles)

**PROJECT DESCRIPTION:** The local Coastal Development Permit authorized the continued use of the site for the following nonconforming uses: annual retail sale of Christmas trees between December 1<sup>st</sup> and 25<sup>th</sup> and annual retail sales of Halloween pumpkins between October 15 and 31<sup>st</sup>; and operation of a youth day camp in the OS-1XL and OS-1-H Zones in proposed Parcel A of PMLA No. 7245.

The City included, in conjunction with the CDP approval, a Parcel Map approval (PMLA No. 7245) for the following: Subdivision of an existing 56.78 acre parcel into two parcels (Parcel A: 3.95 acres and Parcel B: 52.83 acres) in the RE40-1-H zone. (In a letter submitted to Commission staff, dated May 13, 2004, the City states that the CDP included the parcel map approval and uses).

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**SUMMARY OF STAFF RECOMMENDATION**

The staff recommends that the Commission, after public hearing, determine that **a substantial issue exists** with respect to the grounds on which the appeal has been filed for the following reasons: the project approved by the City raises substantial issues of conformity with regards to the Chapter 3 policies involving impacts on coastal resources and public access.

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**SUBSTANTIVE FILE DOCUMENTS:**

1. Parcel Map No. 7245
2. CDP No. 98-004/ZA 98-0229(NC)

## **I. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE**

The staff recommends that the Commission determine that **a substantial issue exists** with respect to the conformity of the City's approval of the project with the provisions of Chapter 3 of the Coastal Act (commencing with Section 30200), pursuant to Public Resources Code Section 30625(b)(1).

**MOTION:** Staff recommends a **No** vote on the following motion:

I move that the Commission determine that Appeal No. A-5-PPL-03-465 raises **NO** substantial issue as to conformity with Chapter 3 of the Coastal Act.

An affirmative vote by a majority of the Commissioners present is required to pass the motion.

## **RESOLUTION:**

The California Coastal Commission hereby finds that Appeal number A-5-PPL-03-465 presents a Substantial Issue with respect to the grounds on which the appeal has been filed under Section 30602 of the Coastal Act regarding consistency of the approved development with Chapter 3 policies of the Coastal Act.

## **II. APPEAL PROCEDURES**

Prior to certification of a local coastal program Section 30602 of the Coastal Act allows any action by local government on a Coastal Development Permit application pursuant to Section 30600(b) to be appealed to the Commission. Sections 13301-13325 of the California Code of Regulations provide procedures for issuance and appeals of locally issued Coastal Development Permits prior to certification of a LCP.

After a final local action on a Coastal Development Permit issued pursuant to section 30600(b) of the Coastal Act prior to certification of the LCP, the Coastal Commission must be noticed within five days of the decision. After receipt of a notice, which contains all the required information, a twenty working day appeal period begins. During the appeal period, any person, including the applicant, the Executive Director, or any two members of the Commission, may appeal the local decision to the Coastal Commission (Section 30602). Section 30621 of the Coastal Act states that a hearing on the appeal must be scheduled for hearing within 49 days of the receipt of a valid appeal, unless a waiver of the 49 days is received from the applicant or representative.

In this case, on October 31, 2003, the South Coast District office received an appeal of the Local Coastal Development Permit during the 20 working day appeal period. On November 4, 1999, Commission staff requested the City to forward all relevant documents and materials regarding the subject permit to the Commission's South Coast District office in Long Beach. Subsequently, at the December 2003 meeting, the Commission opened and continued the public hearing pending receipt of the required documents. Those material documents were received on January 7, 2003. On February 4, 2004, Commission staff received a letter from the applicant's representative waiving the 49-Day time limit for hearing the appeal. The time waiver was provided by the applicant's representative to provide staff additional time to analyze the appeal and the City's record.

The appeal and local action are analyzed to determine if a substantial issue exists as to the conformity of the project to Chapter 3 of the Coastal Act (Section 30625(b)(1)). If the Commission finds that a substantial issue exists, the Commission holds a new public hearing to act on the Coastal Development Permit as a de novo matter.

The Commission may also decide that the appellants' contentions raise no substantial issue as to conformity with the Coastal Act, in which case the action of the local government stands. Alternatively, if the Commission finds that the proposed project, as approved by the City, may be inconsistent with the Chapter 3 policies of the Coastal Act of 1976, it will find that a substantial issue exists with the action of the local government. If the Commission finds substantial issue, then the hearing will be continued open and scheduled to be heard as a de novo permit request at the same or subsequent hearing. Section 13321 specifies that de novo actions will be heard according to the procedures outlined in Section 13114 of the Code of Regulations.

In this case because the development is located within the City's single coastal development permit area, unless the Commission finds substantial issue, the local government's action is final.

### **III. APPELLANTS' CONTENTIONS**

Appeal by Friends of Temescal Canyon (See Appeal Letter, Exhibit No. 4):

1. City's approval of the Coastal Development Permit does not analyze or give any consideration of imminent future development associated with the Parcel Map.
2. The City did not consider cumulative effects of the development.
3. A Subdivision is "Development" subject to the Coastal Act.
4. The applicant has no legal interest in the property to comply with the conditions of the permit.
5. Does not protect property from damage from oil drilling.

Appeal by No Oil (See Appeal Letter, Exhibit No. 5)

1. Special Condition No. 10, that prohibits oil drilling, is not sufficient to prevent oil drilling on or below the property in perpetuity.

#### **IV. FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares:

##### **A. Project Description and Area History**

The City approved a Coastal Development Permit (CDP)/ Parcel Map for the subdivision of the existing 56.78 acre parcel into two parcels (Parcel A: 3.95 acres, and Parcel B: 52.83 acres) in the RE40-1-H zone (PMLA NO. 7245. See Exhibit No. 4, Attachment "B") and continued use of Parcel A for the following nonconforming uses: annual retail sale of Christmas trees between December 1<sup>st</sup> and 25<sup>th</sup> and annual retail sales of Halloween pumpkins between October 15 and 31<sup>st</sup>; and operation of a youth day camp in the OS-1XL and OS-1-H Zones in proposed Parcel A of PMLA No. 7245 (CDP No. 98-004. See Exhibit No. 4, Attachment "C").

The proposed property is located within Temescal Canyon, just north of Sunset Boulevard, in the Pacific Palisades area of the City of Los Angeles. The 56.78 acre parcel has approximately 300 feet of frontage along Sunset Boulevard and extends north from Sunset Boulevard approximately 5,000 feet.

The subject 56.78 acre property is currently being leased by the YMCA of Metropolitan Los Angeles from the Santa Monica Mountains Conservancy. The Santa Monica Mountains Conservancy and YMCA entered into an Option Agreement, that was effective November 8, 1994, which granted the YMCA the right to continue use of the 56.78 acre site to conduct the type of activities as have been conducted in the past and which are currently occurring on the site, and provides YMCA the option to purchase the Parcel A once the proposed subdivision is approved.

According to City records, the YMCA has used the property for 35 years. The upper portion of the property (proposed Parcel B) is developed with a swimming pool and other structures operated and maintained by the YMCA and Santa Monica Mountains Conservancy. Proposed Parcel A, the lower 3.95 acre parcel, is currently undeveloped and used by the YMCA for the annual sales of Christmas trees, Halloween pumpkins, and summer day camp. Under the City's zoning, the annual sales were a use allowed by right when the property was zoned R3-1 and has continued through subsequent down-zonings. The site has been used for the annual sales since 1976.

The surrounding property to the north and west is owned by the Santa Monica Mountains Conservancy, as is the subject property. Minimum density single family residential development lies to the east and low/medium multiple family residential uses lie to the south. A high school is located across Sunset Boulevard directly to the southwest and a condominium complex is just to the east.

The City's permit includes authorization for the applicant's continued use of the smaller lot (proposed Parcel A) for annual or seasonal sales that have taken place regularly since 1976. Although the uses have existed on the site since 1976, and no changes are being proposed, the uses were included in the City's permit because, under the current City zoning of OS (Open Space), the uses are non-conforming legal uses and the City code required that a variance be issued for the continuance of the non-conforming uses. Similarly, unless the applicant establishes a vested right in the episodic activity, a CDP is also needed for each new use of the site that constitutes development. The City's permit was a combined Coastal Development Permit and variance for the existing uses, and a Parcel Map approval for the proposed subdivision. Although the City's CDP does not state that it covers the subdivision, there is some evidence in the findings that it may have been intended to do so, and the City has indicated in a letter to Commission staff, dated May 13, 2004, that the City's approval of the CDP did indeed cover both the parcel Map (PMLA No. 7245) and the continuation of the non-conforming uses.

## **B. Area Planning History**

The City of Los Angeles has a work program to complete a Local Coastal Program in the Pacific Palisades planning area. This work program discusses hillside development standards, along with controlling hillside grading, development standards within the Sunset Boulevard corridor, and identification of geologically unsafe areas. There is no draft LCP for this area.

## **C. Description of Local Approval**

On January 15, 2003, the City's Zoning Administrator approved a coastal development permit (98-004), with conditions, for the:

*Continued use and maintenance of nonconforming annual retail sale of Christmas trees between December 1<sup>st</sup> and December 25<sup>th</sup> and nonconforming annual retail sale of Halloween pumpkins between October 15<sup>th</sup> and October 31<sup>st</sup>, and youth day camp in the OZ1XL and OS-1-H zones in proposed Parcel A of PMLA No. 7245.*

The City also included a variance [ZA 98-0229(NC)] for the existing non-conforming uses. In conjunction with the City's Coastal Development Permit and variance, the Deputy Advisory Agency approved the preliminary Parcel Map No. 7245 (PMLA No. 7245) for the subdivision of the 53.14 acre property into two parcels consisting of a 3.95 acre parcel (A) and a 49 acre parcel (B). As part of the City's action on the CDP, the Parcel Map approval included Coastal Act findings for the subdivision of the property. According to the City, the City's approval of the CDP included the Parcel Map and its Coastal Act findings.

The Zoning Administrator's decision on the CDP, and the Deputy Advisory Agency's decision on the preliminary Parcel Map, was appealed to the West Los Angeles Area Planning

Commission. On March 19, 2003, the West Los Angeles Area Planning Commission sustained the actions of the Zoning Administrator and the Deputy Advisory Agency.

The City's Coastal Development Permit and combined Parcel Map provides an analysis of the annual retail sales, and youth day camp uses and their consistency with applicable Chapter 3 policies of the Coastal Act, with regards to access. Based on this analysis, the Zoning Administrator found, as part of its CEQA findings, that the project is consistent with the access policies of Chapter 3 of the Coastal Act. However, as stated below, the proposed project raises substantial issues with respect to the Chapter 3 policies of the Coastal Act.

### **C. Substantial Issue Analysis**

Section 30602 of the Coastal Act states:

*Prior to certification of its local coastal program, any action taken by a local government on a coastal development permit application may be appealed by the executive director of the commission, any person, including the applicant, or any two members of the commission to the commission..*

Coastal Act Section 30625(b)(1) states that the Commission shall hear an appeal filed pursuant to Section 30602 (where the local government reviews permit applications prior to LCP certification) unless it determines:

*(1) ... that no substantial issue exists as to conformity with Chapter 3 (commencing with Section 30200).*

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal of a locally issued coastal development permit unless it "finds that the appeal raises no substantial issue in accordance with the requirements of Public Resources Code Section 30625(b), and section 13115(a) and (c) of these regulations" (Cal. Code Regs., tit. 14, section 13321. In previous decisions on appeals, the Commission has been guided by the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the policies Chapter 3 of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision; and

5. Whether the appeal raises only local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing petition for a writ of mandate pursuant to the Code of Civil Procedure, section 1094.5.

In this case, for the reasons discussed below, the Commission exercises its discretion and determines that the development approved by the City raises substantial issue with regard to the appellant's contentions regarding coastal resources and conformity with Chapter 3 of the Coastal Act.

#### **D. Substantial Issue Findings**

1. The appellant, Friends of Temescal Canyon, contends:

City's approval of the Coastal Development Permit does not analyze or give any consideration of imminent future development associated with the Parcel Map.

In the City's CDP analysis, the City limited their analysis to the impacts associated with the property's existing uses. Although the applicant states that it is not considering any future development of the site other than to continue the existing uses, by definition, a subdivision creates the potential for additional development, and as a consequence, in order to find a proposed subdivision consistent with the Chapter 3 policies of the Coastal Act, all coastal resources on or surrounding the site that have the potential of being impacted by future development must be considered and evaluated. In addition, the applicant must show that there is an economically viable use that can be made of the proposed new parcel that would not conflict with any Chapter 3 policy.

The City's CDP/Parcel Map included Coastal Act findings and discussed the existing and continued use of the property by the YMCA for seasonal sales and youth day camp. The findings also state that the activities conducted on the subject property by the YMCA are recreational in nature and therefore allowed in the Open space land use designation. However, the Coastal Act findings in the parcel map permit and the CDP do not analyze the subdivision and any potential uses and impacts on coastal resources that may be harder—if not impossible—to control on the site and surrounding parklands once the subdivision is completed.

#### **a) Environmentally Sensitive Habitat Areas**

Section 30240 of the Coastal Act states:

*(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*

*(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

According to the City's record, the property to the north and west (Temescal Canyon Gateway Park) is owned by the Santa Monica Mountains Conservancy. Temescal Canyon Gateway Park is a 141 acre park within Temescal Canyon that is developed with a parking lot just north of Sunset Boulevard and west of the proposed Parcel A, information Kiosks, restrooms, picnic areas and trails. The park property provides public access and recreational opportunities, such as hiking and biking, and provides access to Topanga State Park further to the north. Temescal Canyon, including the park area, is identified as a Significant Ecological Area by the County of Los Angeles (Los Angeles County Significant Ecological Areas Study, 1976). The canyon contains dry chaparral and coastal sage scrub plant communities, and riparian communities along the bottom of the canyon, which contains a blue-line stream.

The County-wide Significant Ecological Area Study states that medium intensity recreational uses are compatible with the resources of the area. The park area, adjacent to the proposed subdivision property is developed with a trailhead, parking lot, picnic and play areas, restrooms, nature facility/ranger residence, and walking paths (CDP No. 5-91-816). The southwestern portion of parcel A of the proposed subdivision provides ingress into the park from Sunset Boulevard, through a recorded access easement.

The proposed Parcel A contains a number of oak trees (20 oaks in the 12-16 inch diameter range) scattered throughout the site, along with Eucalyptus trees. On the tentative parcel map a surveyor's note indicates that no trees will be removed and one of the City's conditions of approval of the subdivision requires that no non-native vegetation shall be planted, except for grass. However, the City's review did not include a biological assessment of the existing vegetation on the site, so it cannot be determined at this time if the existing oaks and other existing vegetation on the site are a significant part of the riparian corridor of the canyon or significantly contribute to the habitat values of the canyon. Furthermore, although the parcel map contains a note that no trees will be removed, the City's permits do not include any conditions requiring the protection of the trees. Therefore, with the City's permit approval it is unclear if the trees are protected from all future development.

The City's CDP/parcel map did not analyze these resources on or surrounding Parcel A or B, and did not identify potential impacts to these resources from the creation of two separate lots. Without a biological assessment and without knowing any potential building sites for future development, the approval of the subdivision could have unavoidable adverse impacts on the existing vegetation and potential habitat values. The City did not impose any special conditions addressing the location or intensity of future development on the newly created lot to protect resources and public recreation. The Commission typically imposes such conditions on new lots in areas with habitat and recreational resources to assure that future development will protect these resources and to inform later purchasers or decision makers of the limitations of the site. The Coastal Act requires development to be sited and designed



to prevent impacts which would significantly degrade environmentally sensitive areas, and be compatible with the continuance of those habitat and recreation areas. Protection of coastal resources and use of parklands must be considered as required in Section 30240 of the Coastal Act, and absence of such a consideration raises a substantial issue with this section of the Coastal Act.

b) Scenic Resources

Section 30251 of the Coastal Act states:

*The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.*

and Section 30240 (b), in part states:

*(b) Development in areas adjacent to ... parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those ... recreation areas.*

As stated above, the property immediately to the west is owned by the Santa Monica Mountains Conservancy and developed as a park (Temescal Canyon Gateway Park). The park property provides public access and recreational opportunities, such as hiking and biking, and provides access to Topanga State Park further to the north.

The City's coastal act findings state that the setting of the site is "park-like and aesthetically pleasing", and the continued annual sales will not disrupt the natural character of the area and are compatible with the surrounding area. However, the City's findings only addressed the existing uses of the site that the YMCA will continue to operate. The City's findings did not address the potential impact the subdivision and future development of the site will have on the visual quality of the area from and along the adjacent park and from Sunset Boulevard. The City's CDP/parcel map did not analyze the scenic resources on or surrounding proposed Parcel A or B, including location of public trails in the area, and visibility of the site from the park, and did not identify potential impacts to these scenic resources due to the creation of two separate buildable lots. Because of the proximity of the park to the proposed subdivision site, the siting and design of future development on either of the two parcels could have an adverse impact on the scenic resources of the area. Without an analysis of where future development could be sited, it can not be determined at this time the potential impact the subdivision could have on scenic resources in the area.

c) Recreational Resources

Section 30223 of the Coastal Act:

*Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.*

Because of the sites proximity to the recreational area of Temescal Canyon Gateway Park, the property may be suited for support of upland coastal recreational uses. Although the surrounding area is developed residentially, the property is adjacent to a popular recreational area, and can support recreational uses that are compatible with the canyon park. The property is currently owned by the Santa Monica Mountains Conservancy and transferring the property from a public agency to the YMCA, who could subsequently sell the property to another entity who may have an expectation of a more profitable use of the property could make it more difficult for the Commission to ensure that the ultimate use of the site would not have greater adverse impacts in the area. Although the site is currently used for private recreational use during the summer, the City's reports did not analyze the potential use of the site to support coastal recreational uses.

d) Conclusion

Although, the City's approval prohibits development of the site for 10 years and the current zoning (Open Space) limits development of the site, since there is no certified LCP, zoning can change without Commission review. Once the zoning has been changed and approved by the City and the 10 years has passed, the property owner will have the ability to develop the property consistent with the City's zoning, once the owner receives all necessary permits from the City, including a coastal development permit. However, the Commission has consistently required when reviewing proposed subdivisions and the creation of new buildable lots, that the potential impacts from creating new buildable lots be analyzed during the review of the CDP for the subdivision, to ensure that developing on the newly created lot can be found consistent with applicable Coastal Act policies. The City's approval of the subdivision did not include an analysis of existing resources on the site and an analysis of the potential adverse impacts future development could have on the existing site and surrounding areas nor did it analyze the potential of the site to support coastal recreational uses. Therefore, the appellant's contentions addressing future development do raise a substantial issue with the Chapter 3 policies of the Coastal Act.

2. The appellant, Friends of Temescal Canyon, contends:

The City did not consider cumulative effects of the development.

The appellant states that:

*Even though the stated purpose of the Parcel Map as described in the Project Description included with the City applications is to make the 3.95 acre portion of the*

*SMMC Property available for sale to the Applicant, for the purposes of the Coastal Act, the City cannot limit its review of the development to conveyance purposes alone when future development of the property is probable.*

According to the appellant the development involves construction of new facilities that the City did not analyze. The appellant states that the applicant's goal is:

*to compliment [sic] the nonconforming day camp activities and the use of the existing swimming pool on the property with its own aquatic center or similar facility on the parceled area. Although the city was fully aware of the Applicant's development goals, it neglected to analyze the entire development project.*

The appellant also refers to "notes" that the City included for "informational purposes" only, in their Parcel Map approval, that informs the applicant that they will need to obtain other discretionary approvals prior to construction of any new facilities. Therefore, according to the appellant, with the inclusion of this "note", the City acknowledges that future development is imminent.

In support of the appellant's contention, the City's file for this Parcel Map/ CDP project includes a site plan for the proposed Parcel A for a Y.M.C.A. center. However, these plans are from 1978 and appear to be preliminary plans associated with a previous submittal to the City. However, there was no action on these plans and they are not part of this project. Furthermore, under the current zoning, such a facility would not be allowed and would require further discretionary approval from the City, including a zone change, and a coastal development permit, which the City's permit notes.

Based on the submitted record, there is no indication by the City or the applicant, that the applicant is proposing to develop or use the property for anything other than what is currently existing—seasonal sales on proposed Parcel A, and swimming and youth camp on proposed Parcel B. However, the applicant, as future owner of Parcel A, will have the ability to develop the property consistent with the City's zoning, once the applicant receives all necessary permits from the City, including a coastal development permit. However, in order to analyze a proposed subdivision's potential impact on coastal resources and its consistency with the Coastal Act, potential future development must be identified and analyzed in terms of its impact on coastal resources.

Under the City's current zoning for the property, there are additional uses that could be developed on the site that were not analyzed for their potential impacts on the resources of the area. Under the City's current zoning, allowable uses include recreational trails, park areas, children's play areas, picnic facilities, athletic fields; and natural resource preserves for the managed production of resources. Furthermore, as a separate parcel and under private ownership, it is possible that the owner of parcel A could obtain a zone change from the City and plan to develop the site with more intensive development. Section 30250 of the Coastal Act states in part:

*(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.*

The City's CDP did not identify and analyze any potential future uses for the site or existing coastal resources on or surrounding the site that could be impacted by cumulative effects of future development. Therefore, the subdivisions cumulative impacts were not addressed under the City's CDP. Therefore, the appellant's contentions addressing cumulative and future development does raise a substantial issue with Section 30250 of the Coastal Act.

**3. The appellant, Friends of Temescal Canyon, contends:**

A Subdivision is "Development" subject to the Coastal Act.

According to the Coastal Act, pursuant to Section 30106, the term "development" includes:

*subdivision pursuant to the Subdivision Map Act, and any other division of land, including lot spits...*

As stated, the City took concurrent, but separate actions on the Parcel Map and the CDP. Although the City's CDP does not state that it covers the subdivision, there is some evidence in the findings that it may have been intended to do so, and the City has indicated in a letter to Commission staff, dated May 13, 2004, that the City's approval of the CDP did indeed cover both the parcel Map (PMLA No. 7245) and the continuation of the non-conforming uses. Even though the City's action on the CDP and Parcel Map was ambiguous the City agrees that the approval of the parcel map is development under the Coastal Act and requires a CDP, which has been processed and approved by the City. Therefore, the question of the subdivision being considered development under the Coastal Act does not raise a substantial issue with respect to the Chapter 3 policies of the Coastal Act, since the City issued a CDP to include the subdivision of Coastal Development Permit description.

**4. The appellant, Friends of Temescal Canyon, contends:**

The applicant has no legal interest in the property to comply with the conditions of the permit.

The appellant states that the applicant has not demonstrated it has the authority to comply with the conditions of approval as required by Section 30601.5

Section 30601.5 states:

*Where the applicant for a coastal development permit is not the owner of a fee interest in the property on which a proposed development is to be located, but can demonstrate a legal right, interest, or other entitlement to use the property for the proposed development, the commission shall not require the holder or owner of any superior interest in the property to join the applicant as coapplicant. All holders or owners of any other interests of record in the affected property shall be notified in writing of the permit application and invited to join as coapplicant. In addition, prior to the issuance of a coastal development permit, the applicant shall demonstrate the authority to comply with all conditions of approval.*

The City's records indicate that the applicant, YMCA, has entered into an option agreement to purchase the 3.95 acre parcel (proposed Parcel A) with the underlying landowner, Santa Monica Mountains Conservancy, and will exercise that option once the subdivision is approved. The record contains a letter from the Santa Monica Mountains Conservancy confirming this agreement. Therefore, the applicant has demonstrated legal interest in the property, which will be finalized after the subdivision approval, and once the applicant has purchased the property and has become the legal owner, the applicant will have the legal ability to carryout the conditions of the City's permit.

Furthermore, the applicant's legal interest in the property is a filing requirement and does not raise issues with the Chapter 3 policies of the Coastal Act. The grounds for appeal are the Chapter 3 policies of the Coastal Act. Section 30601.5 of the Coastal Act is not a Chapter 3 policy of the Coastal Act. Therefore, the question of the applicant's legal interest in the property does not raise a substantial issue with respect to the Chapter 3 policies of the Coastal Act.

**5. The appellants, Friends of Temescal Canyon and No Oil, contend:**

Special Condition No. 10, that prohibits oil drilling, is not sufficient to prevent oil drilling on or below the property in perpetuity and will not protect the property from damage.

Under the City's current zoning of OS- Open Space, natural resource preserves for the managed production of resources is a permitted use. However, the proposed subdivision and proposed uses do not include oil drilling or other natural resource mining operations. Furthermore, the City conditioned the PMLA No. 7245 to prohibit oil drilling activities on the subject property (see Exhibit No. 6, Attachment B, pg 2, condition no. 10a). Moreover, since the 56.78 acre site is currently zoned as Open Space, where oil production may be permitted, the proposed subdivision of the property into two separate parcels does not change the potential of the site for oil production. Furthermore, oil production or any other resource management production on the site will require a separate coastal development permit.

However, since the city did not identify, under the City's Coastal Development Permit, any coastal resources, i.e. native vegetation, access trails, etc., on the site, and did not analyze the potential impacts that future development, such as oil drilling, may have on those resources, the proposed project raises substantial issues with the Chapter 3 policies of the Coastal Act.

### **Conclusion**

The City's lack of coastal resource analysis and analysis of the development potential that would be created by the subdivision, raises a substantial issue. Because of the proximity of Temescal Canyon and the park to the project site, future development of the site could adversely impact natural resources and public access within the park. The Commission finds that Substantial Issues (contentions no. 1, 2, 5 discussed above) exist with respect to the approved project's conformance with the resource protection provisions of Chapter 3 of the Coastal Act. Therefore, appeal No. A-5-PPI-03-465 raises Substantial Issue with respect to the above stated grounds on which the appeal has been filed.

### **E. Information Needed for De Novo Hearing**

As discussed previously in this report, additional resource analysis is necessary to evaluate the project's impacts to existing resources that are located on the site and the area surrounding the site. Information that would be needed is an assessment of the biological resources on the site and surrounding area and a visual analysis of the area. Once this information is provided with a Coastal Development Permit application, staff can prepare a recommendation for the de novo portion of the appeal. A de novo hearing will be scheduled at a future Commission meeting.